

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**LOUIE SEDILLO**

Petitioner,

v.

**Civ. No. 04-0379 MV/RHS**

**LEROY PINO, Warden, PATRICIA  
MADRID, Attorney General of the  
State of New Mexico**

Respondent.

**MAGISTRATE JUDGE'S PROPOSED FINDINGS  
AND RECOMMENDED DISPOSITION**

1. Petitioner is currently incarcerated and is proceeding pro se and in forma pauperis.

Petitioner is in custody pursuant to the Judgment, Partially Suspended Sentence and Commitment of the First Judicial District Court for the County of Santa Fe, State of New Mexico, dated December 9, 1998. (Answer Ex. A.) After he pled guilty to one count of aggravated assault on a peace officer, one count of possession of a deadly weapon by a prisoner and admitted his status as an habitual offender, Petitioner was sentenced to thirteen years incarceration to be followed by two years parole. (Answer Ex. A.) Petitioner was subsequently transferred to a facility in Virginia by the State of New Mexico.

2. Petitioner raises one issue in his application for federal habeas relief. He contends that he is entitled to a lump sum award of good time for the one year, seven months and eighteen days he was confined out of state.

3. A habeas corpus petitioner must exhaust available state court remedies before

obtaining federal habeas relief. See Rose v. Lundy, 455 U.S. 509, 519 (1982). The exhaustion requirement is based on notions of comity and creates a "strong presumption in favor of requiring the prisoner to pursue his available state remedies." Granberry v. Greer, 481 U.S. 129, 131 (1987). This Court has the discretion to reach the merits of an unexhausted claim that is clearly without merit, or easily resolvable against the defendant. See 28 U.S.C. § 2254 (b)(2); Hoxsie v. Kerby, 108 F.3d 1239, 1242-43 (10th Cir. 1997). Federal district courts, however, routinely dismiss petitions where the petitioner has failed to exhaust his state court remedies. See Bear v. Boone, 173 F.3d 782, 786 (10th Cir. 1999).

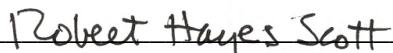
4. In the present case, Petitioner's claim that he is entitled to a lump sum award of good time is pending before the state district court. (Answer, Ex. B-K) Petitioner has failed to exhaust his state court remedies with respect to the issue raised in his federal petition.

#### **Recommended Disposition**

The Magistrate Judge recommends that Petitioner's claim under 28 U.S.C. § 2254 be DISMISSED WITHOUT PREJUDICE for failure to exhaust state court remedies.

Timely objections to the foregoing may be made pursuant to 28 U.S.C. § 636(b)(1)(C). Within ten days after a party is served with a copy of these proposed findings and recommendations that party may, pursuant to §636(b)(1)(C), file written objections to such proposed findings and recommendations with the Clerk of the United States District Court, 333 Lomas Blvd. NW, Albuquerque, NM 87102.

A party must file any objections within the ten day period allowed if that party wants to have appellate review of the proposed findings and recommendations. If no objections are filed, no appellate review will be allowed.

  
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ROBERT HAYES SCOTT  
UNITED STATES MAGISTRATE JUDGE